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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,682

09/19/2003

Kazutoshi Kaizuka

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33356 7590 04/01/2008  
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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

04/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/664,682

**Applicant(s)**

KAIZUKA, KAZUTOSHI

**Examiner**

Robyn Doan

**Art Unit**

3732

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-34 is/are pending in the application.
- 4a) Of the above claim(s) 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/07 has been entered.

#### ***Election/Restrictions***

Newly submitted claims 31-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The curler as claimed in claims 14-30 can be made from a different method such as the described method in the prior art of record.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 31-34 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-30 are rejected under 35 U.S.C. 102(b) as being anticipated by JP '259.

JP '259 discloses a hair curling apparatus including (4) having a curler m40) adapted to provide electric power; and a cylindrical curler body (1) having a plurality of radially extending protrusions (10), a recess adapted to receive the curler mount, and an internal heater (3) adapted to heat the curler and a thermolabel. The curler is made of a mixture of powders and polyester resin (paragraph 009). The powder mixture includes silicon dioxide (silica), aluminum oxide (alumina), ferrous oxide (ferrite), magnesium oxide (magnesia) and phosphoric anhydride and comprises 1-3 percent of the mixture (table 1 and paragraph 009). The mixture is capable to cause the curler body to emit electromagnetic waves of 4 to 14 microns when the curler is heated by the internal heater.

Claims 14, 15, 18-21, 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Wong et al.

Wong et al disclose a hair curling device comprising a base (610) having a curler mount adapted to provide electric power; and a cylindrical curler body (650) having a plurality of radially extending protrusions (660), a recess adapted to receive the curler mount, and an internal heater (see figs. 6A-B, col. 5, lines 22-41) adapted to heat the curler. The curler is made of a mixture of powders and heat-resistant resin. The powder mixture includes silicon dioxide (silica), aluminum oxide (alumina), ferrous oxide (ferrite), titanium oxide (titania), calcium oxide, magnesium oxide (magnesia) and

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phosphoric anhydride and comprises 3-5% of the mixture. The mixture is capable to cause the curler body to emit electromagnetic waves of 4 to 14 microns when the curler is heated by the internal heater.

### ***Response to Arguments***

Applicant has argued that prior art fails to show the curler having a mixture of heat-resistant resin, a silicon dioxide-based multi element mineral powder and far-infrared emitting powder. This is not correct, Applicant is noted that JP '259 discloses the curler including heat resistant resin being polyester elastomer (paragraph 009), powder mixture includes silicon dioxide (silica), aluminum oxide (alumina), ferrous oxide (ferrite), magnesium oxide (magnesia) and phosphoric anhydride (table 1 and paragraph 009). Applicant further argued that the present invention emphasizes the synergistic effect. It is noted that no evidence of any synergism; also, Applicant argued that prior art fails to show the mixture causes electromagnetic waves of 4 to 14 microns; however, the claim recites "the mixture being adapted to cause"; and since JP '259 shows the essential mixture powder, therefore, the mixture is capable to cause the curler body to emit electromagnetic waves of 4 to 14 microns.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the

grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732